

Decision of the Japan Anti-Doping Disciplinary Panel

Name of Athlete: X  
Sport: Rugby football

Pursuant to the decision of the Hearing Panel convened for Case 2014-007, the Japan Anti-Doping Disciplinary Panel has made the following decision with respect to this case.

January 30, 2015  
Japan Anti-Doping Disciplinary Panel  
Chairman: Toshio Asami

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Case 2014-007: Hearing Panel Decision

The Hearing Panel for Case 2014-007, which is composed of the following members appointed by the Chair of the Japan Anti-Doping Disciplinary Panel pursuant to Article 8.3.2 of the Japan Anti-Doping Code (the “Japan Anti-Doping Code” as referred to herein means the Japan Anti-Doping Code of February 23, 2009, Version 2.0; hereinafter, the “Code”), has made the following decision concerning this case pursuant to the results of the hearing (the “Hearing”) held on January 13, 2015.

January 30, 2015  
Kazuki Shishido \_\_\_\_\_  
Katsumi Tsukagoshi \_\_\_\_\_  
Noboru Mezaki \_\_\_\_\_

Decision:

- A violation of Article 2.1 of the Code is found to have occurred.
- In accordance with Article 10.1.1 of the Code, subject to the decision of the JAPAN RUGBY FOOTBALL UNION, the individual results obtained in the Japan Rugby Top League 2014-2015 shall be disqualified, and consequences shall be imposed including the forfeiture of all medals, points and awards acquired during in such event.
- In accordance with Articles 10.4, 10.9.1 and 10.9.2 of the Code, ineligibility shall be imposed for a period of three months starting from December 17, 2014.

Reasons:

- While the new Japan Anti-Doping Code has been in effect since January 1, 2015, Article 25.7 of said code sets forth that said code shall not apply retroactively to matters pending before the effective date of January 1, 2015. In this case, sample collection from the Athlete and the subsequent result of testing positive, as well as the notice of provisional suspension, was conducted within 2014; therefore, the Code applies to this case.
- The substance “tulobuterol” that was detected from the Athlete in in-competition testing conducted on November 29, 2014 is designated as a prohibited substance under “S3. Beta-2 Agonists” in The 2014 Prohibited List International Standard (the “Prohibited List”), and it constitutes a “Prohibited Substance” as prescribed in Article 2.1 of the Code. In response to this, the Athlete neither requested an analysis of the B Sample, nor contested the test results or the process and procedure that led to those results at the provisional hearing or the hearing.
- Accordingly, the athlete can be found to have violated Article 2.1 of the Code (Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete’s Sample) in this case, and it is appropriate to consider that, in accordance with Article 10.1.1 of the Code, subject to the decision of the JAPAN RUGBY FOOTBALL UNION, the individual results obtained in the Japan Rugby Top League 2014-2015 shall be disqualified, and consequences shall be imposed including the forfeiture of all medals, points and awards acquired during in such event.
- Furthermore, the substance above that was detected in this case, while on the one hand constituting a “Prohibited Substance,” also is a “Specified Substance” under the Prohibited List. Based on the testimony of and the documents (the respective written statements of the Athlete and his spouse, the medical certificate of the Athlete’s family doctor, the written explanation of the prescribed medicine, the results of lung function test, etc.) submitted by JADA, the Athlete himself, the Athlete’s attorney named Gentaro Takasaki, the team trainer of the team to which the Athlete belongs, and the persons related to the sports organization (the secretariat of the JAPAN RUGBY FOOTBALL UNION), the documents submitted by JADA (the Doping Control Form, etc.) as well as the entire purport of the Hearing, the following facts can be found.
  - (1) The tulobuterol that was detected in this case had since previously been prescribed for the cure of bronchitis for the Athlete’s eldest son, and can be reasonably assumed to have been contained in the “Hokunalin tape” which the Athlete stuck to himself for the purpose of alleviating his own asthmatic symptoms.
  - (2) According to the Athlete’s claim, the Athlete had been suffering asthmatic symptoms since a few days prior to the day of the match of Section 1, 2nd Stage of the Japan Rugby Top League, the day on which the in-competition testing in this case was conducted, and due to the aggravation of his asthmatic symptoms on November 27, used, upon the recommendation of his spouse, the Hokunalin tape which had since previously been prescribed for his eldest son, as an emergency measure upon heading towards the hospital

to receive medical treatment by his family doctor. Such claim of the Athlete is also supported by the doctor's medical certificate and written evidences such as the past prescription history of Hokulanin tape and other asthma treatment medicine, and no contrary evidence can be found in particular. Therefore, the Athlete's use of such substance in this case can be found to have been for the purposes of temporary alleviation of his asthmatic symptoms.

- (3) The Athlete can be seen to have taken endeavors to avoid the use of prohibited substances, as are indicated in his efforts to receive prescription of medicine not containing prohibited substances by clarifying, upon receiving medical treatment by the doctor, that he was an athlete possibly subject to a doping test, and after being prescribed medicine, making an inquiry towards the team trainer regarding the medicine which he was capable of taking. However, even though his use of the "Hokunalin tape" may have been an emergency measure, it is unavoidable to find the Athlete to have been in fault in that he carelessly used the "Hokunalin tape" without confirming with other professionals, simply upon recommendation by his spouse, without realizing the possibility that it might include a Prohibited Substance due to it not being an oral medication.
- Taking into consideration the above circumstances and the fact that this was a first violation, it is appropriate, upon comprehensively taking into account the Athlete's degree of fault, to impose a three-month period of ineligibility pursuant to Article 10.4 of the Code.
  - In this case, the Athlete has been under a provisional suspension pursuant to Article 7.6.1 of the Code from the December 17, 2014 notice date until the time of the present decision (a provisional hearing was held on January 13, 2015 concerning the relevant provisional suspension). Accordingly, pursuant to Article 10.9.2 of the Code, the commencement date for the period of ineligibility shall be December 17, 2014.

Based on the foregoing, we have made our decision as stated above.

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